

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT J. ORTEGA and DEPARTMENT OF THE ARMY,
CORPUS CHRISTI ARMY DEPOT, Corpus Christi, TX

*Docket No. 99-1610; Submitted on the Record;
Issued August 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a two percent impairment of his left arm for which he received a schedule award.

On April 2, 1998 appellant, then a 50-year-old aircraft mechanic, filed an occupational disease claim alleging that he sustained pain in both elbows due to factors of his federal employment. The Office of Workers' Compensation Programs accepted appellant's claim for bilateral lateral epicondylitis. The Office authorized a left elbow excision on July 10, 1998.

On March 10, 1999 appellant filed a claim for a schedule award. By decision dated April 9, 1999, the Office granted appellant a schedule award for a two percent permanent impairment of the left arm. The period of the award ran for 6.24 weeks from November 23, 1998 to January 5, 1999.

The Board finds that appellant has no more than a two percent permanent impairment of the left arm for which he received a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,¹ and section 10.404 of the implementing federal regulations,² schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.³

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ *James J. Hjort*, 45 ECAB 595 (1994).

In a report dated February 19, 1999, Dr. Rufino H. Gonzalez, a Board-certified orthopedic surgeon and appellant's attending physician, related that he last examined appellant on November 23, 1998 at which time his condition remained unchanged. Dr. Gonzalez related that "[appellant's] injury and subsequent surgery resulted in residual pain over the lateral epicondyle. There is mild, permanent impairment of the use of the left upper extremity." He opined that, according to Table 11 on page 48 of the A.M.A., *Guides*, appellant had a 30 percent, or Grade 3 impairment due to pain. Dr. Gonzalez further found that the maximum impairment under the A.M.A., *Guides* for pain over the radial nerve with sparing of the triceps was five percent.⁴ He concluded that appellant had a two percent impairment of the whole body which translated to a four percent impairment of the left upper extremity.

On March 28, 1999 an Office medical adviser reviewed Dr. Gonzalez's February 19, 1999 medical report and concurred with his findings. He further noted that appellant had reached maximum medical improvement on November 28, 1998. The Office medical adviser correctly found, however, that multiplying 5 percent for pain over the radial nerve by the 30 percent grade of pain found by Dr. Gonzalez's constituted a 2 percent impairment of the left upper extremity rather than a 4 percent impairment. As the Office medical adviser properly applied the provisions of the A.M.A., *Guides* to Dr. Gonzalez's findings, his report constitutes the weight of the medical evidence and establishes that appellant has no more than a two percent impairment of the left arm, for which he received a schedule award.

The decision of the Office of Workers' Compensation Programs dated April 9, 1999 is hereby affirmed.

Dated, Washington, D.C.
August 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ A.M.A., *Guides* 54, Table 15.